The Tax Institute

9 January 2025

Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Secretariat,

Treasury Laws Amendment (Tax Incentive and Integrity) Bill 2024

The Tax Institute welcomes the opportunity to make a submission to the Senate Economics Legislation Committee (**Committee**) in respect of its inquiry and report on the Treasury Laws Amendment (Tax Incentive and Integrity) Bill 2024 (**Bill**) and accompanying explanatory memorandum (**EM**).

Our comments in this submission are limited to Schedule 2 to the Bill. Schedule 2 amends the *Income Tax Assessment Act 1997* (*Cth*) to deny deductions in respect of general interest charges (**GIC**) and shortfall interest charges (**SIC**) incurred by taxpayers. The proposed amendments apply to SIC and GIC incurred in income years starting on or after 1 July 2025.

The Tax Institute supports the government's intention to improve self-assessment accuracy and encourage timely tax payments. However, given that the availability of a deduction for the GIC and SIC has been integral to the tax system for an extended period, we recognise that this is a significant change for taxpayers to navigate. We are of the view that unintended consequences may be minimised by implementing legislative amendments to ensure equity and transparency. Doing so will assist taxpayers to adapt to this change and enhance the administration of our tax system.

Our recommendations to support taxpayers through this transition may be summarised as follows:

- clarify whether the proposed measure applies to amended assessments issued on or after 1 July 2025 that are referable to income years beginning before 1 July 2025;
- reduce the fixed percentage point uplift for both GIC (7%) and SIC (3%) if deductions are denied for the charges, as the proposed measure will exacerbate the already onerous burden of these uplifts by up to 88%. This recommendation is of particular importance as the proposed measure is due to apply in an economic environment that is likely to continue to be challenging for taxpayers;

- alternatively, if the uplifts are not reduced, restrict the denial of the deduction to the relevant uplift component of both the GIC and SIC so that only the base interest component remains deductible. However, we acknowledge that implementing such an approach would be administratively more challenging;
- promote fairness in the remission process by ensuring that remission decisions for both GIC and SIC are unconditionally reviewable. Where this is not possible, we recommend that, as a base line, remission decisions pertaining to the GIC should be open to challenge on the same basis as those pertaining to the SIC; and
- while we recognise that the assessability of interest incurred by taxpayers on overpayments, early tax payments or delayed refund of tax is a separate issue, in considering the proposed measures, we recommend that consideration also be given to the measures in place to encourage accuracy and accountability of the Australian Taxation Office (**ATO**), in issuing amended assessments. This may help to create a more level playing field in the context of both over- and under-payments of tax.

Our detailed submission is contained in **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact The Tax Institute's Head of Tax & Legal, Julie Abdalla, on [redacted].

Yours faithfully,

[redacted]

Scott Treatt

Chief Executive Officer

[redacted]

Tim Sandow

President

APPENDIX A

We have set out below our detailed comments and observations on the amendments proposed in Schedule 2 of the Bill for your consideration.

Preliminary comments

The Tax Institute acknowledges that where a country operates a self-assessment system, there is an argument for incentivising taxpayers to pay the correct amount of tax and on time. Appropriately designed interest charges can provide a mechanism that create equity among taxpayers and compensate the government for the deprivation of revenue that is not paid on time. Charging taxpayers interest for incorrectly assessing their tax liabilities and/or making late payments of tax due is an internationally recognised way of achieving these objectives. However, there are certain important features that need to be built into interest charge regimes to ensure they stand up to the principles of good tax law.

Australia's interest regime has operated since 1992. The GIC was introduced in 1999, and the SIC was introduced in 2005. A brief survey of its history shows that Australia's current approach has been formally acknowledged by the International Monetary Fund (**IMF Report**), as an example of good practice in relation to the clarity that surrounds the calculation of interest charges for late payment.

The IMF Report also references other features of interest charge regimes that are considered to be good practice. For example, the setting of a rate for late payment that is higher than the commercial rate, which may be achieved by way of a fixed percentage point uplift (**uplift rate**) to, for example, the central bank lending rate.

We consider that it is crucial to carefully consider the proposed measure's implementation in the context of the broader social and economic environment in which it will operate. While the intent of the proposed measure appears to be to promote timely tax compliance, the immediate impact on taxpayers, particularly those already facing overdue tax liabilities, could be profound. Increased financial pressure may force businesses to divert resources from critical operations such as payroll or purchasing inventory, putting their long-term viability at risk. This could, in turn, have significant consequences for the wider economy. A potential rise in business failures could lead to increased unemployment, reduced consumer spending, and slower economic growth, creating a cycle of hardship that affects not only those taxpayers, but the community as a whole. Financial strain is likely to be compounded by emotional and psychological distress – effects that extend beyond the purely economic impacts.

We consider that the government can achieve its objectives, without placing undue strain on taxpayers or the economy, by considering some of our recommendations outlined below. Adopting one or more of these recommendations may assist in the proposed measure achieving its objectives while ensuring the broader economic and social fabric are safeguarded.

Reducing the uplift rate

The GIC uplift rate has been set at 7% since the early 2000s. However, if the proposed measure is enacted as currently drafted, our view is that the uplift rate should be reduced. This is particularly so given the proposed measure significantly increases the effective cost of GIC by up to 88%. To illustrate this impact using a simple example; if a taxpayer (who is taxable at the highest marginal rate (being 47% including the Medicare Levy) is liable for $100 of GIC, under the current rules, they would save $47 in tax after claiming the existing deduction for GIC, meaning that the ultimate cost of the GIC liability in this case is $53. However, if the GIC is non-deductible, the ultimate cost of that liability is the entire $100. This is an 88% increase in the ultimate cost of the GIC liability to the taxpayer compared to the existing rules. In our view, this is excessive and beyond what would be reasonable to achieve the policy intent of the proposed measure.

A reduction in the uplift rates will convey to taxpayers that the policy approach on interest charges is not to disproportionately punish, but rather to deter people from failing to meet their tax obligations. This option provides a fairer outcome for taxpayers who might already be stretched financially, and also will alleviate some pressure on those taxpayers who otherwise might be struggling in this economic environment with rising interest rates and inflation, among other things.

Restrict non-deductibility to the uplift component

The GIC is set at a base rate (currently, 4.42%) plus an uplift rate of 7%, resulting in an effective rate of 11.42% for the period from January to March 2025. The SIC is set at the same base rate with an uplift rate of 3%, currently equating to an effective rate of 7.42% for the same period. If the proposed measure proceeds in its current form, we consider that the uplift rates for both the GIC and SIC are higher than required to achieve their objective and may risk being perceived as punitive. We maintain that these rates should be reduced.

However, as a potential alternative, we recommend that due consideration is given to limiting the non-deductibility of GIC and SIC to the relevant uplift component. This would serve the dual purpose of somewhat reducing the financial impact of the proposed measure and alleviating concerns that this measure may be punitive in nature. However, we recognise that such an approach is likely to be administratively challenging and the feasibility of its practical implementation should be given further consideration.

Application to the amended assessment

Schedule 2 proposes to deny deductions for GIC and SIC for in income years starting or after 1 July 2025. The EM to the Bill provides that deductions will be denied for GIC and SIC incurred in income years starting on or after 1 July 2025. The term ‘incurred’ is not defined within the *Income Tax Assessment Act 1997 (Cth)* (**ITAA 1997**), the *Income Tax Assessment Act 1936 (Cth)* (**ITAA 1936**), nor the *Taxation Administration Act 1953 (Cth)* (**TAA**). Therefore, it is necessary to refer to judicial decisions and, where relevant, ATO guidance.

In *Commissioner of Taxation v Nash* [2023] FCA 336 (***Nash)***[1], the Federal Court held that a taxpayer incurs GIC liability when served with a notice of assessment (**NoA**) triggering the liability to pay income tax to which the GIC relates. While *Nash* involved the GIC, the ATO has indicated that it will apply the same interpretation of 'incurred' in relation to SIC. On this basis, it appears that the proposed measure is intended to apply prospectively to any NoA issued for income years beginning on or after 1 July 2025. We support the proposed measure's prospective application in this regard. However, some uncertainty remains about how the proposed measure will apply to amended assessments issued after 1 July 2025 that are referable to income years starting before that date.

In the interests of clarity and certainty around how the proposed measure applies to amended assessments, we recommend grandfathering the tax treatment of liabilities in relation to GIC and SIC, where they are referable to income years starting before 1 July 2025.

Reviewability of GIC and SIC remission decisions

The EM indicates that the right to request GIC and SIC remission will continue under the proposed framework. The Commissioner retains the discretion to remit these interest charges where it is deemed fair and reasonable to do so, taking into account the specific circumstances surrounding delayed tax payments or shortfalls. In doing so, ATO officers are expected to have regard to established guidelines contained in Practice Statement Law Administration PSLA 2011/12: *Remission of General Interest Charge*, and PS LA 2006/8: *Remission of shortfall interest charge and general interest charge for shortfall periods*. However, feedback from our members suggests that the ATO has over time tightened its approach to the granting of remissions. The ATO's decision to deny the remission of GIC is not subject to internal review.[2] This means that where a taxpayer disagrees with the ATO's decision not to remit the GIC, the only recourse available to the taxpayer is to appeal the ATO's decision in the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*.

While SIC decisions can be reviewed[3], the review process is subject to conditions that we understand limit accessibility in practice. If a taxpayer disagrees with the ATO's decision not to remit the SIC and the amount of the taxpayer's outstanding liability is more than 20% of the shortfall, then the taxpayer can object to the ATO's SIC remission decision (**20% outstanding liability test**). Otherwise, they can only seek external review through the Administrative Review Tribunal (formerly, the Administrative Appeals Tribunal).

Given the proposed measure seeks to deny the deductibility of these interest charges, in the interests of fairness, we recommend that GIC and SIC remission decisions be made unconditionally reviewable. If this recommendation is not adopted, we suggest that at a minimum, an equivalent test to the 20% outstanding liability test for SIC remission should be established for GIC remission decisions.

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[1] *Commissioner of Taxation v Nash* [2023] FCA 336; [Decision Impact Statement] Commissioner of Taxation v Nash; [TD 2012/2] Income tax: when is the shortfall interest charge incurred for the purposes of paragraph 25-5(1)(c) of the *Income Tax Assessment Act 1997?*

[2] Section 14ZS, TAA.

[3] Section 14ZS, TAA.

We consider that enhancing the remission review process is likely to encourage voluntary compliance, while fostering a more cooperative relationship between taxpayers and the ATO. To maintain trust and fairness, a transparent review process that applies equally to the GIC and SIC should be implemented. This will help to ensure accountability, uphold confidence in the system, and dispel concerns that the GIC operates on a strict liability basis. This is particularly necessary given the adverse financial impact of the proposed measure on taxpayers.

Incentivising all participants in the tax system and fostering accountability

We acknowledge that the assessability of interest payable to a taxpayer on an overpayment, early payment or a delayed refund of tax is a separate issue. However, it relates to the role of the ATO and the impact that it has on taxpayers in carrying out its functions. This is significant in the context of the policy underpinning the proposed measure, which seeks to encourage taxpayers to manage their tax affairs with correctly and promptly.

Therefore, we recommend that in this process, consideration also be given to the measures in place to encourage and ensure the accuracy and accountability of the ATO, particularly in issuing amended assessments and dealing with overpayments of tax. While the outcomes are distinct, ensuring the ATO is accountable and encouraged to issue accurate amended assessments, and promptly refund overpaid tax, may assist in fostering a perception of a more level playing field in the context of over- or under-payments of tax.